

FIREWORKS - PUBLIC SALE, DISPLAYS, AND STORAGE - CODE OF 2005
Ordinance # 05-400-06

Article I. Purpose; Findings

1.01. *Purpose.* It is the purpose of this ordinance to set forth requirements and restrictions regarding the sale of fireworks to the public, fireworks displays and storage of fireworks all of which are occurring within the jurisdiction of the Little River Band of Ottawa Indians.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

b. the Tribal Council is delegated the authority, under Article IV, Section 7(?) to manage the properties of the Tribe and authorizes uses thereof;

c. the sale of fireworks to the public should be regulated to prohibit the sale of unduly dangerous fireworks;

d. the display of fireworks to the general public should be regulated to provide a safe display to the surrounding area which avoids unnecessary fire hazards and injury to persons and property by identifying appropriate safe areas and safety personnel; and

e. fireworks transportation and storage should be conducted in a manner which lessens the dangers to the product owners, general public and public and private property in and around the transported or stored fireworks.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted on an emergency basis by resolution # 05-0622-289.

a. Resolution # 05-1005-492 - permanent adoption of emergency action.

b. Resolution # 06-0621-433 - emergency amendments to section 6.05(h).

c. Resolution # 07-0509-252 - emergency amendment to disallow the sale of Class B fireworks except for events sponsored by the Little River Band of Ottawa Indians.

d. Resolution # 07-0620-332 – permanent adoption of the emergency amendment to disallow the sale of Class B fireworks except for events sponsored by the Little River Band of Ottawa Indians.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *NFPA* means the National Fire Protection Association.

3.03. *Authority having jurisdiction* as used in the NFPA Code 1123 means the Little River Band of Ottawa Indians, and where referencing authority to issue permits, means the Tribal Council.

Article IV. General

4.01. *NFPA Codes; Adoption by Reference.* This ordinance shall adopt, by reference, the NFPA Code 1123, *Code for Fireworks Display*, 2000 ed., and formal opinions; and the NFPA Code 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic*, 2003 Ed., and formal opinions. Such codes, and their references standards shall be incorporated into this ordinance as if set out at length herein.

4.02. *Effective Date.* The effective date of this ordinance shall be upon the date of adoption and shall apply to the sales, storage or display of all fireworks or pyrotechnic related activities.

4.03. *Permits - Sale, Storage, Display.* An operator shall be required to obtain separate permits for the sale, storage and/or display of fireworks or pyrotechnic devices from the Tribal Council. Such permit shall only be granted for the sale, storage, and/or display of Class C fireworks, except that a permit may be granted for Class B fireworks for events sponsored by the Little River Band of Ottawa Indians. Such permit shall require the filing of the following information.

a. Federal permit issued under the Safe Explosive Act or other applicable federal law or regulation.

b. Insurance certificate in the amount of \$1,000,000 coverage, or other level identified by the Tribal Council, which shall be effective during the duration of an authorized permit.

c. Letter or other document that identifies that the following public offices have been notified and are able to provide services during the permit period.

1. Public Safety Department.

2. Fire protection services.

3. Emergency ambulance services.

d. The name of the registered agent, with a statement that the applicant, upon receipt of a permit issued under this ordinance, accepts and agrees to the jurisdiction of the Tribe and the Tribal Courts.

e. Copies of prior permits and authorizations, or other documents, which demonstrates the applicant's competency in handling fireworks and pyrotechnic devices, storage, display and sales.

4.04. *Permits - Duration.* Permits shall identify a beginning date and ending date and shall not be longer than two months in duration

4.05. *Permits - Location.* Permits shall identify the location for sale, display or storage of fireworks or pyrotechnic devices.

4.06. *Permits - Approval/Denial.* The Tribal Council may approve or deny any permit application for failure to provide the necessary information in section 4.03, or when determined solely in the opinion of the Tribal Council to be in the interests of the health, safety or general welfare of the members, the Tribe, or the general public.

4.07. *Correction to NFPA Code.* Section 1.2.3 of NFPA Code 1123 is amended to delete "state" and insert "Tribal."

4.08. *Form of Permit.* The permit shall be in the form of a resolution adopted by Tribal Council and shall be displayed in a manner which can be viewed by public officials or consumers at public sales sites, storage locations, or made available prior to and during fireworks displays.

Article V. Violation

5.01. *Violation.* Any person who shall violate any provision of this ordinance, or fail to comply with the requirements set forth herein, or shall fail to comply with any permit issued in accordance with this ordinance, shall be guilty of a civil ordinance violation and subject to a fine up to, and including, \$2000.00 per violation.

5.02. *Each Occurrence.* Each prohibited firework or pyrotechnic device shall be considered a separate violation, and each day a prohibited act occurs is considered a separate violation. Provided that, persons shall be given a reasonable time in which to correct violation, of which, firing or otherwise exploding a firework or pyrotechnic device shall not be considered a correction.

5.03. *Prosecution of Violation.* Violations shall be issued a citation through the Public Safety Department, and prosecuted by the Prosecutor.

5.04. *Confiscation of Devices.* The Public Safety Department shall have the authority to confiscate fireworks or pyrotechnic devices which violate the restrictions in this ordinance. Provided that, the Public Safety Department is authorized to engage, on an emergency basis, vendors or other public officials necessary to confiscate and destroy fireworks and pyrotechnic devices. In the event such devices require special handling, the owner of the prohibited devices shall be charged the costs of those services for disposal.

Article VI. Fireworks

6.01. *Defined.* For purposes of this Article, fireworks means a device made from explosive or flammable composition used primarily for the purpose of producing a visible display or audible effect, or both, by combustion, deflagration, or detonation. Fireworks include both Class B fireworks and Class C fireworks.

6.02. *Class B Fireworks Defined.* For purposes of this Article, Class B fireworks means toy torpedoes, firecrackers or salutes that do not qualify as Class C fireworks, exhibition display pieces, aeroplane flares, illuminating projectiles, incendiary projectiles, incendiary grenades, smoke projectiles or bombs containing expelling charges but without bursting charges, flash powders in inner units not exceeding 2 ounces each, flash sheets in interior packages, flash powder or spreader cartridges containing not more than 72 grains of flash powder each, and other similar devices. The sale, storage, and/or display of Class B fireworks other than for an event sponsored by the Little River Band of Ottawa Indians shall be strictly prohibited.

6.03. *Class C Fireworks Defined.* For purposes of this Article, Class C fireworks means toy smoke devices, toy caps containing not more than .25 grains of explosive mixture, toy propellant devices, cigarette grenades, smoke signals, hand signal devices, Very signal cartridges, sparklers, explosive auto alarms, and other similar devices.

6.04. *Sale, Possession, Transportation, Use, Prohibited.* Except as provided in section 6.05, and as authorized by permit issued under this Ordinance, a person, firm, partnership, or corporation shall not offer for sale, expose for sale, sell at retail, keep with intent to sell at retail, possess, give, furnish, transport, use, explode, or cause to explode any of the following:

- a. A blank cartridge, blank cartridge pistol, toy cannon, toy cane, or toy gun in which explosives are used.
- b. An unmanned balloon which requires fire underneath to propel it and is not moored to the ground while aloft.
- c. Firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, bottle rockets, whistling chasers, rockets on sticks, or other fireworks of like construction.
- d. Fireworks containing an explosive or inflammable compound or a tablet or other device commonly used and sold as fireworks containing nitrates, fulminates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus, or a

compound containing these or other modern explosives.

6.05. *Exceptions.* A permit is not required for the following:

- a. Flat paper caps containing not more than .235 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.
- b. Toy pistols, toy cannons, toy canes, toy trick noise makers, and toy guns or a type approved by the Tribal Council in which paper caps as described in subsection (a) are used and which are so constructed that the hand cannot come in contact with the cap when in place for the explosion and which are not designed to break apart or be separated so as to form a missile by the explosion. Evidence of authorization by other authorities may be presented when requesting authorization by resolution of the Tribal Council.
- c. Sparklers containing not more than .0125 pounds of burning portion per sparkler.
- d. Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter, cone fountains, and cylinder fountains.
- e. Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.
- f. Possession, transportation, sale, or use of signal flares of a type approved by the Public Safety Department, blank cartridges or blank cartridge pistols specifically for a show or theater, for the training or exhibiting of dogs, for signal purposes in athletic sports, for use by military organizations, and all items described in section 6.04 used by railroads for emergency signal purposes.
- g. The sale of fireworks, provided they are to be shipped directly out of state pursuant to regulations of the United States department of transportation covering the transportation of explosives and other dangerous articles by motor, rail, and water.
- h. Individuals may purchase reasonable user quantities of Class C fireworks for their personal and individual use.